

PUBLIC UTILITIES COMMISSION505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 24, 2006

Agenda ID #5592
RatesettingTO: PARTIES OF RECORD IN RULEMAKING 01-09-001 AND
INVESTIGATION 01-09-012

This is the draft decision of Administrative Law Judge (ALJ) Timothy Kenney. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the Assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

ANG:sid

Attachment

Decision **DRAFT DECISION OF ALJ KENNEY** (Mailed 4/24/2006)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Rulemaking 01-09-001
(Filed September 6, 2001)

Order Instituting Investigation on the
Commission's Own Motion to Assess and Revise
the New Regulatory Framework for Pacific Bell
and Verizon California Incorporated.

Investigation 01-09-002
(Filed September 6, 2001)

**DECISION CLOSING THE PROCEEDING AND
CANCELING THE REHEARING OF DECISION (D.) 03-10-088
ORDERED BY D.04-07-036 AND D.04-12-024**

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O P I N I O N**1. Summary**

This Decision closes the New Regulatory Framework (NRF) proceeding because it has been superseded by the Uniform Regulatory Framework (URF) proceeding. The NRF proceeding will be reopened, as necessary, to address requests for intervenor compensation.

2. Background

The NRF proceeding commenced with the issuance of the combined Order Instituting Rulemaking (OIR) 01-09-001 and Order Instituting Investigation (OII) 01-09-002 to assess and revise the New Regulatory Framework for Pacific Bell Telephone Company d/b/a AT&T California¹ and Verizon California Inc. (Verizon). The NRF Order divided this proceeding into three phases. Phase 1 addressed an audit of Verizon that was conducted by the Division of Ratepayer Advocates (DRA).² Phase 2 addressed (i) an audit of AT&T California that was overseen by the Commission's Telecommunications Division, and (ii) how service quality has fared under NRF. Except as noted below, Phases 1 and 2 are complete. The purpose and status of Phase 3 are described below.

The Commission addressed Phase 2 service quality issues in D.03-10-088. In D.04-07-036, as modified by D.04-12-024, the Commission granted limited rehearing of D.03-10-088 on the following matters: (1) Commission workpapers associated with the production of D.03-10-088; (2) charts and tables regarding AT&T California's and Verizon's compliance with General Order 133-B; (3) work

¹ AT&T California was formerly known as SBC California.

² DRA was formerly known as the Office of Ratepayer Advocates.

papers used by AT&T California's expert witness, Dr. Hauser; (4) the time-trend analysis prepared by The Utility Reform Network (TURN); and (5) the AT&T California surveys identified in Ordering Paragraph (OP) 14 of D.04-12-024. The rehearing granted by D.04-07-036 and D.04-12-024 has not yet commenced.

Phase 3 was subdivided into Phases 3A and 3B. In general, the scope of Phases 3A and 3B is whether to revise certain elements of NRF based, in part, on the record developed in Phases 1 and 2. The exact scope of Phases 3A and 3B is set forth in Appendices A and B of today's Decision. Written comments and reply comments regarding Phase 3A issues were filed on October 31 and December 13, 2002, respectively. There has been no hearing or decision on Phase 3A issues. Phase 3B has not yet started.

In April 2005, the Commission issued OIR 05-04-005 to develop a uniform regulatory framework for most telecommunications utilities, including AT&T California and Verizon, to the extent it is feasible and in the public interest to do so. Many of the policy issues designated for Phase 3 of the NRF proceeding are now being addressed in the URF proceeding. The regulatory framework adopted in the URF proceeding, if any, will likely replace NRF and thereby obviate the need for the NRF proceeding.

In light of the URF proceeding, the assigned Administrative Law Judge (ALJ) for the NRF proceeding invited parties to file comments regarding the following: (1) whether the NRF proceeding could be closed, (2) whether it is still necessary to conduct the rehearing of D.03-10-088 ordered by D.04-07-036 and D.04-12-024, and (3) what outstanding motions still needed to be ruled upon. Comments were filed on June 30, 2005, by MCI Inc. (MCI), AT&T California (f/k/a/ as SBC California), Verizon, and jointly by DRA and TURN. Reply comments were filed on July 15, 2005, by AT&T California and Verizon.

3. Position of the Parties

3.1. DRA & TURN

DRA and TURN (collectively, “DRA/TURN”) recommend that the NRF docket remain open to resolve the rehearing issues. They also recommend that Phases 3A and 3B of the NRF proceeding be consolidated with the URF proceeding for the sake of administrative efficiency. For example, the scope of both the NRF and URF proceedings includes monitoring requirements. DRA/TURN believe that it makes little sense to consider monitoring requirements in both proceedings. Consolidation would also allow the Commission to use the record of the NRF proceeding to address issues in the URF proceeding, such as service quality and affiliate reporting requirements.

3.2. MCI

MCI states that if the Commission does not close the NRF proceeding, the scope of the NRF proceeding should be reduced to avoid duplication with the URF proceeding.

3.3. AT&T California and Verizon

AT&T California and Verizon believe the NRF proceeding should be closed and that there is no need for the rehearing of D.03-10-088 ordered by D.04-07-036 and D.04-12-024.

4. Discussion

The purpose of the NRF proceeding is to assess and revise the New Regulatory Framework for AT&T California and Verizon. This purpose has been superseded by the URF proceeding where we are developing a regulatory framework that, if adopted, will supersede NRF. In light of the URF proceeding, we conclude that the NRF proceeding is no longer needed and should be closed. Relevant portions of the record of the NRF proceeding may be incorporated into

the URF proceeding in accordance with Rules 72 and 73 of the Commission's Rules of Practice and Procedure.

DRA/TURN recommend that the Commission keep the NRF proceeding open to rehear certain Phase 2B service quality issues as ordered by D.04-07-036 and D.04-12-024. We disagree. The purpose of Phase 3 with respect to service quality was whether and how NRF should be revised to achieve high quality service. Parties could recommend revisions to NRF based on the Phase 2 record regarding how service quality has fared under NRF.³ Thus, the rehearing issues are relevant only to the extent they form the basis for revising NRF in Phase 3. With the advent of the URF proceeding, we have shifted our focus from revising NRF, which applies only to AT&T California and Verizon, to developing a uniform regulatory framework that applies to all telecommunications carriers (except small incumbent local exchange carriers (ILECs)). As a result, the rehearing issues are no longer material to any issue currently before the Commission. Although D.03-10-088 will remain defective to the extent it is based on evidence and material that were supposed to be reheard pursuant to D.04-07-036 and D.04-12-024, there is no need to cure the defects because there is no indication that D.03-10-088 will be used to decide any issues in the URF proceeding or elsewhere.

In addition to the rehearing issues, there are several issues in the NRF proceeding that will be left unresolved by the closure of the proceeding. These issues include those listed in Appendix A, Items 12, 13, 14, 15, and 18, and all

³ NRF OIR/OII, *mimeo.*, App. A, pp. A-4, A-10.

issues listed in Appendix B of today's Decision.⁴ There is no need to resolve these issues at this time. The Commission may retire previously identified issue after providing parties with notice and an opportunity to be heard.⁵ The assigned ALJ's ruling issued on June 13, 2005, satisfies that requirement.⁶

5. Outstanding Motions

There are numerous pending motions in this proceeding. The assigned ALJ's Ruling issued on June 13, 2005, directed the parties to identify all pending motions that still needed to be ruled upon and notified the parties that any pending motions not identified may be deemed moot. AT&T California identified several motions to place documents under seal, which were subsequently granted.

DRA identified one motion that still needed to be ruled upon. Specifically, on February 18, 2003, DRA filed a motion that asked the Assigned Commissioner to reverse a ruling issued on January 29, 2003, by the Law and Motion ALJ to the extent the ALJ's ruling required DRA to respond to discovery requests propounded by AT&T California. DRA's motion is moot, as there is no longer a need for discovery in this proceeding because of today's Decision to close the proceeding. Accordingly, DRA's motion is denied.

⁴ Issues that are listed in Appendix A, but not Appendix B, have been superseded by the URF proceeding. Issues that are listed in both Appendix A and B, or only in Appendix B, are retired by today's Decision to the extent they are not superseded.

⁵ Pub. Util. Code § 1708.

⁶ Parties may raise in future proceedings the issues in Appendices A and B to the extent these issues are material and relevant to matters at issue in future proceedings.

Consistent with the assigned ALJ's ruling issued on June 13, 2005, all pending motions not identified by the parties as needing to be ruled upon are hereby deemed moot and denied on that basis.

6. Intervenor Compensation

There is one pending request by TURN for intervenor compensation in this proceeding, and more requests may be filed after this Decision is issued. Although today's Decision closes the NRF proceeding, we will reopen the proceeding at a later time for the purpose of issuing a decision on TURN's pending request for intervenor compensation. The NRF proceeding will also be reopened, as necessary, to address any other requests for intervenor compensation that are timely filed by eligible parties.

7. Comments on the Draft Decision

The draft decision of the assigned ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) and Rule 77.7. Comments and reply comments were filed by _____, on _____.

8. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner for this proceeding and Timothy Kenney is the assigned ALJ.

Findings of Fact

1. The scope of Phases 3A and 3B of the NRF proceeding consists primarily of whether, and to what extent, to revise the New Regulatory Framework for AT&T California and Verizon. The exact scope of Phases 3A and 3B is set forth in Appendices A and B of today's Decision.

2. OIR 05-04-005 states that the purpose of the URF proceeding is to develop a uniform regulatory framework for all telecommunications carriers, except small ILECs, to the extent that it is feasible and in the public interest to do so.

3. The purpose of the NRF proceeding has been superseded by the URF proceeding.

4. D.04-07-036, as modified by D.04-12-024, granted limited rehearing of D.03-10-088 with respect to certain items of evidence and documents related to the Commission's evaluation of historical service quality under NRF.

5. There is no indication that the issues identified in Appendices A and B of today's Decision, which include the rehearing issues set forth in D.04-07-036 and D.04-12-024, are relevant to any material issues in the URF proceeding or elsewhere.

6. There is one request for intervenor compensation currently pending in the NRF proceeding, and more requests might be filed following the issuance of today's Decision.

Conclusions of Law

1. Because the NRF proceeding has been superseded by the URF proceeding, it is not necessary to (i) address the issues listed in Appendices A and B of today's Decision, or (ii) conduct the limited rehearing of D.03-10-088 granted by D.04-07-036 and D.04-12-024.

2. The NRF proceeding should be closed because (i) it has been superseded by the URF proceeding, and (ii) the pending matters in the NRF proceeding are not relevant to any material issue before the Commission in the URF proceeding or elsewhere.

3. D.03-10-088 is defective to the extent it is based on evidence and material that were to be reheard pursuant to D.04-07-036 and D.04-12-024. This defect is

harmless because there is no indication that D.03-10-088 will be used to decide any material issues in the URF proceeding or elsewhere.

4. The ruling issued by the assigned ALJ on June 13, 2005, provided notice and an opportunity to be heard in accordance with § 1708 regarding the closure of the NRF proceeding.

5. All outstanding motions are moot and should be denied on that basis.

6. The following Order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. This proceeding is closed.

2. All outstanding motions are denied.

3. This proceeding will be reopened to address the pending request for intervenor compensation filed by The Utility Reform Network and any other requests for intervenor compensation that may be timely filed by eligible parties.

This order is effective today.

Dated _____, at San Francisco, California.

Appendix A

Current Scope of Phases 3A and 3B

Phase 3A Issues		
	Issue	Reference
1.	Timing of Price Cap Advice Letter: Whether AT&T California and Verizon should file their annual price cap A/Ls on September 1 st instead of October 1 st as is currently the case.	OIR 01-09-001 & OII 01-09-002, Appendix A, p. A-8.
2.	Criteria and Procedures for Revising Prices: What criteria and procedures (other than those resolved in R.98-07-038) should be used to revise (1) prices for services in Categories 1, 2 and 3; and (2) price floors and ceilings for Category 2 services. Topics that are within the scope of this proceeding include the criteria and procedures (other than those resolved in R.98-07-038) that should be used to set and revise prices for (1) promotional offerings, (2) bundled offerings, and (3) customer-specific contracts. Parties should address whether the current criteria and procedures are adequate, or need to be refined or replaced. Parties are encouraged to address whether and how parties besides AT&T California and Verizon may propose price changes. Issues that are beyond the scope of this proceeding include the following: (1) changes to the existing definitions of Categories 1, 2, and 3; (2) changes to the existing categorization of services; (3) changes to existing prices, price caps, and price floors; and (4) changes to Commission review procedures resolved in R.98-07-038.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-8 and A-9, as further explained in the ACRs issued on 12/27/01 and the 9/23/02.

Phase 3B Issues		
	Issue	Reference
1.	Price-Cap Index: The price cap index was suspended by D.95-12-052. Phase 3B will address whether to reinstate the price-cap index, continue the suspension of the index, or eliminate it altogether. Parties should address what criteria (e.g., the state of competition in the relevant markets) the Commission should use to determine which course of action to take. Any party that proposes a specific course of action should provide adequate information for the Commission to adopt the proposal.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-4 and A-5, as further explained in the 12/27/01 ACR, pp. 7 - 9.
2.	LE Factor Mechanism: Phase 3B will address whether to retain the LE factor mechanism adopted in D.98-10-026, modify the mechanism, or eliminate it on a prospective basis. The Commission's focus will be on the formulation of policy regarding the regulatory treatment for exogenous costs. Accordingly, the Commission will not consider the addition of any new LE factors or the elimination of any existing LE factors or Z-factors. Parties may address whether and how the LE factor mechanism should be revised to provide an opportunity for parties other than the utilities to propose LE factors.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-5 and A-6.
3.	Earnings Sharing Mechanism: The earnings sharing mechanism was suspended by D.98-10-026. Phase 3B will address whether to eliminate the sharing mechanism, continue the suspension of the mechanism, or reinstate sharing. Parties should address what criteria (e.g., the state of competition in the relevant markets) should be used to determine whether sharing should be eliminated, suspended, or reinstated.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-6 and A-7.
4.	Assuming the Commission reinstates an earnings-sharing mechanism: (a) Whether SFAS 106 costs recorded and reported for regulatory accounting purposes should be limited to tax-deductible contributions to external PBOP	D.04-02-063, pp. 55-56, 57, 95-96, COL 92, and OP 16.

Phase 3B Issues		
	trust funds. (b) Whether any SFAS 106 costs in excess of both (1) tax-deductible contributions, and (2) PBOPs funded with surplus pension assets should be carried forward and recognized as an expense in future years when tax-deductible contributions exceed SFAS 106 costs. (c) Whether the Commission should review and approve depreciation expenses. (d) Which Cat. 1 and 2 services should be included in the sharing mechanism. (e) What procedures, if any, are needed to ensure that refunds of sharable earnings are passed through to end-users, including refunds allocated to flexibly priced services and/or intermediary services such as access services and unbundled network elements.	
5.	Gain on Sale: Phase 3B will address how gains from the sale of utility assets should be treated under NRF. (Note: the gain-on-sale issue was transferred to R.05-04-005 pursuant to an ALJ ruling issued on 6/17/05.)	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-7 and A-8.
6.	Audit Findings and Recommendations: Parties may propose revisions to NRF based on the results of the AT&T California and Verizon audits. Any party that proposes such a revision must demonstrate a connection between the proposed revision and the results of the audits.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-9 and A-10; D.04-02-063, p. 151, COL 92, and OP 16.
7.	Revisions to NRF Monitoring Reports: Phase 3B will address whether, and to what extent, the NRF monitoring reports should be revised. Any party that proposes new or revised monitoring reports should demonstrate how its proposal would enhance the Commission's ability to monitor the seven NRF goals set forth in D.89-10-031. Any party that proposes to eliminate a monitoring report should demonstrate why doing so would not detract from the Commission's ability to monitor the seven NRF goals.	OIR 01-09-001 & OII 01-09-002, Appendix A, A-10; D.04-09-061, OP 12.

Phase 3B Issues		
8.	Deterrence: Parties may submit proposals for revising NRF in ways that deter utilities from (a) violating the Commission's rules for affiliate transactions, (b) violating the Commission's rules re: the imputation of directory earnings, and/or (c) submitting inaccurate information to the Commission.	D.02-10-020, OP 16.
9.	Service Quality: Phase 3B will address whether and how NRF should be revised to achieve high-quality service. Parties may present proposals that are based on the record developed in Phase 2B regarding how service quality has fared under NRF. Parties may also recommend revisions that are intended to promote the availability of high quality services, such as a system of financial carrots and sticks tied to measurements of service quality. Additionally, parties may present proposals regarding whether and how utilities should recover costs associated with the changes to NRF related to service quality. However, this proceeding will not address the recovery of a specific amount of costs.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-10 and A-11, as further explained in the 12/27/01 ACR, p. 9; and D.03-10-088, OP 11.
10.	Provision of High Quality Service: Phase 3B will address whether specific changes to NRF are necessary to (1) improve the high quality of service provided under NRF, and (2) prevent future violations of service quality statutes, rules, and orders without making it necessary for parties to pursue lengthy formal complaint processes.	D.03-10-088, pp. 7, 8, 87, 178, FOF 326, COL 7, and OP 7.
11.	Reporting of Survey Data: Phase 3B will address issues concerning the reporting of survey data under the P.A. 02-03 and P.A. 02-04 filing categories. Phase 3B will focus on whether additional unreported data exists from the period under review and how AT&T California and Verizon should file survey data prospectively.	D.03-10-088, OP 10.
12.	Continued Submission of Service Quality (SQ) Monitoring Reports Specified in D.00-03-021: Phase 3B will consider DRA's proposal to require Verizon to submit the SQ monitoring reports specified in D.00-03-021 after the requirement ends in 2004.	D.02-10-020, OP 2.

Phase 3B Issues		
13.	Merger Compliance Oversight Team (MCOT) Reports: Phase 3B will address whether AT&T California and Verizon should continue to submit the FCC MCOT reports to the Commission after the FCC requirement to submit these reports expires.	D.03-10-088, p. 165.
14.	Directory Revenues: Phase 3B will address the regulatory treatment of Yellow Page revenues under NRF.	ACR issued on Dec. 27, 2001, pp. 4 – 5.
15.	Measurement of Excessive Directory Earnings: Whether the ROR for determining excessive directory earnings in the future should be 10.5%, 11.5%, or some other ROR.	D.02-10-020, OP 16.
16.	Whether Verizon’s Earnings are Excessive.	D.02-10-020, OP 16.
17.	Outstanding PBOP Issues: Parties may address whether there are any outstanding issues from D.98-10-026 and/or Resolution T-16102 re: AT&T California’s expired SFAS 106 Z-Factor that require resolution by the Commission.	D.04-02-063, p. 52, COL 92, OP 16.
18.	Next NRF Review: Parties may present proposals regarding (1) what guidance the Commission should provide about the issues that should be addressed in the next triennial review, and (2) the procedures that should be established to provide parties with an opportunity to offer input regarding the scope of the next triennial review.	OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-11.

(END OF APPENDIX A)

Appendix B

Issues to Be Addressed in NRF Proceeding Pursuant to the URF OIR 05-04-005, Appendix B, Item 11.G

- 11.G. The following matters will be addressed in R.01-09-001/I.01-09-002:
- i. Rehearing of the following matters granted by D.04-07-036 and D.04-12-024:
(a) The Commission's workpapers, (b) GO 133-B data for AT&T California and Verizon, (c) the workpapers of AT&T California expert Dr. Hauser; (d) TURN's time trend regression analyses; and (e) every AT&T California survey identified in OP 14 of D.04-12-024.
 - ii. Whether AT&T California and Verizon should continue to submit the FCC Merger Compliance Oversight Team Reports to the Commission after the FCC requirement to submit these reports expires. (D.03-10-088, p. 165)
 - iii. Whether Verizon should continue to submit the service quality reports specified in D.00-03-021 after the requirement ends in 2004. (D.02-10-020, OP 2.)
 - iv. Issues concerning the reporting of survey data under the P.A. 02-03 and P.A. 02-04 filing categories. R.01-09-001/I.01-09-002 will focus on whether additional unreported data exists from the period under review and how AT&T California and Verizon should file survey data prospectively. (D.03-10-088, OP 10.)
 - v. Whether specific changes to NRF are necessary to (a) improve the high quality of service provided under NRF, and (b) prevent future violations of service quality statutes, rules, and orders without making it necessary for parties to pursue lengthy formal complaint processes. (D.03-10-088, *mimeo.*, pp. 7, 8, 87, 178, FOF 326, COL 7, and OP 7.)
 - vi. Proposals to revise NRF in ways that deter utilities from (a) violating the Commission's rules for affiliate transactions and the imputation of directory earnings, and (b) submitting inaccurate information. (D.02-10-020, OP 16.)
 - vii. Proposals to revise NRF based on (a) the results of the AT&T California and Verizon audits; and (b) D.03-10-088 re: Service Quality. (OIR 01-09-001 & OII 01-09-002, Appendix A, pp. A-9 and A-10; D.04-02-063, p. 151, Col 92, and OP 16; and D.03-10-088, OP 11.)

(END OF APPENDIX B)